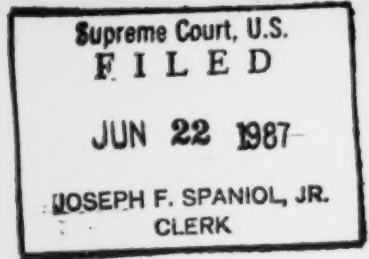


86-2050



No. 86-_____

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

CARLYN M. AND CAROL J. JOHNSON
(C-ME-J ENTERPRISES)

Appellants,

v.

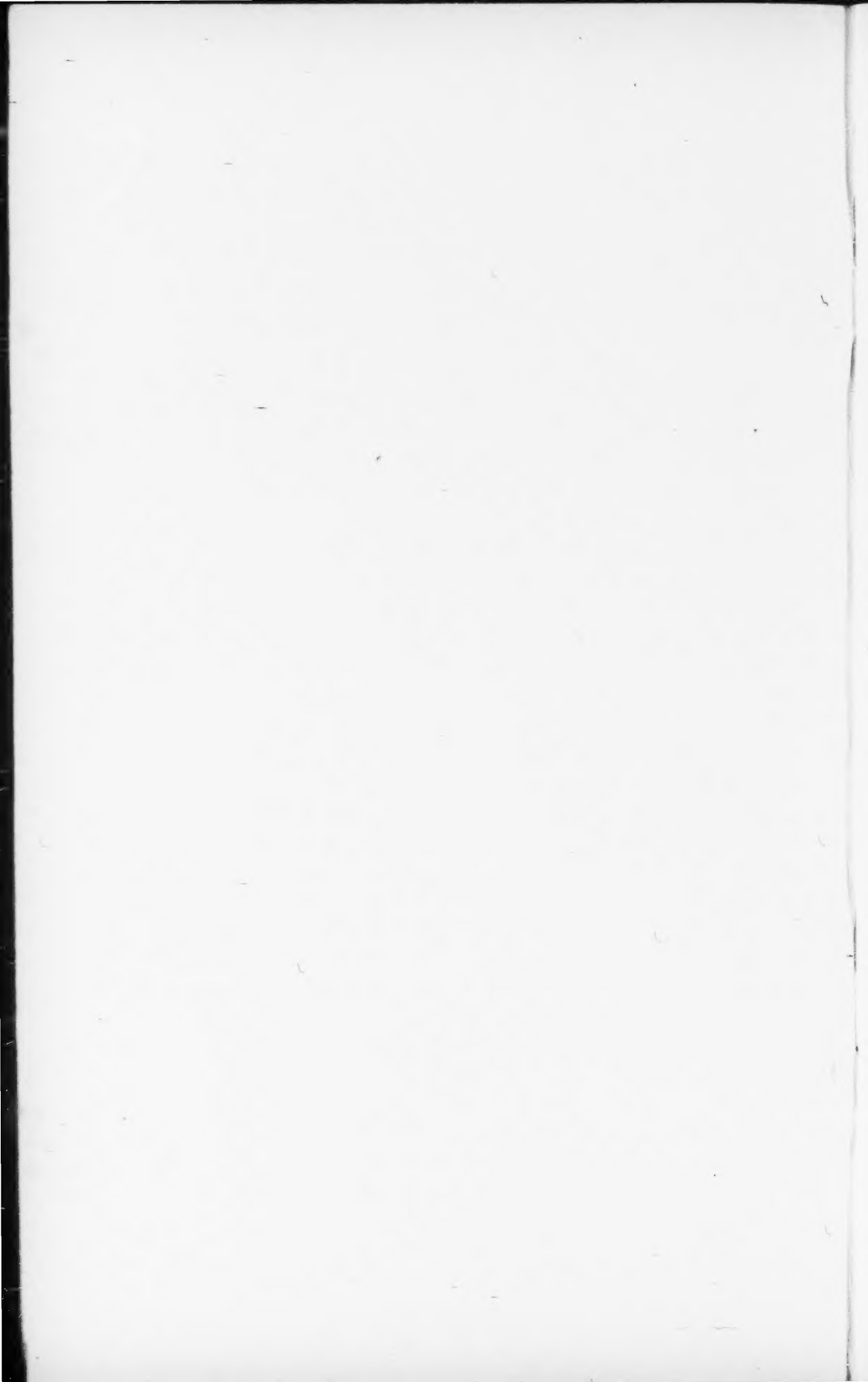
COMMISSIONER OF INTERNAL REVENUE
(INTERNAL REVENUE SERVICE)

Appellees.

**PETITION FOR A WRIT OF CERTIORARI/
PETITION FOR A WRIT OF CERTIORARI
BEFORE JUDGMENT
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

CARLYN M. AND CAROL J. JOHNSON
11987 Brookmont Drive
Maryland Heights, Missouri 63043
(314) 739-8326

Pro-Se



QUESTIONS PRESENTED¹

1. In the First Part of the Appellants Petition: Does the Civil Rights Act of 1871 Section 1983 provide protection for the Appellants if and when: a.) The IRS violates Code 446 § 4060 of the IRS Rules & Regulations in the Federal Tax Guide Reports when the agent refuses to accept valid documents provided by the Appellants; b.) The IRS violates Code 274 § 3592 of the IRS Rules & Regulations in the Federal Tax Guide Reports when the agent refuses to accept reasonable and probable oral evidence to substantiate valid deductions; c.) The IRS violates Code 6001 § 6561 of the IRS Rules & Regulations in the Federal Tax Guide Reports when the Appellants have never been issued an Administrative Summons from the agent or anyone else from the IRS and the agent orders the Appellants to produce their books for their business and inspects the books without an Administrative Summons. d.) The IRS violates § 15,019 - 'Field Examinations of Returns' of the IRS Rules & Regulations in the Federal Tax Guide Reports by demanding that the Appellants bring all their records, accounting books and everything pertaining to the business into their office (no matter how many boxes the Appellants had to bring in) and refused to conduct the examinations year after year at the Appellants place of business; e.) The IRS violates Article 7 - Amendment 4 of the U.S. Constitution by not issuing any warrants for either the business or the personal examinations and not even being able to show any probable cause whatsoever and not even conducting any examinations over the entire five year period by supporting their searches with oath or affirmation, and by conducting their search over a five year period for both the business and personal without probable cause or any warrants; f.) The IRS violates Article 7 - Amendment 5 of the U.S. Constitution when the agent conducting the unreasonable search interrogates the Appellants by attempting to compel the Appellants to admit to tax evasion even if its not true, and when the agent(s) deprive the Appellants of liberty and property without due process of law by violating Amendment 5 and all the other laws mentioned and by not presenting an indictment of a Grand Jury, and because the IRS separated the five years of 1979, 1980, 1981, 1982, and 1983 when they issued their statutory notices of deficiencies instead of keeping them all together as one entire audit as it is by the use of the Form 5213 (even though that form was signed under duress from the IRS's agent (s)) because the year 1979 was left open for their determination until they had completed the audits for 1980, 1981, 1982, and 1983 and then after they had postponed

¹See all original previous filings

the determination and completed the rest of the years, then they went back and made their determination for all the years. g.) The IRS violates Article 7 - Amendment 6 of the U.S. Constitution when the IRS demanded to inspect all the records and books of the Appellants-both personal and business (the Appellants did not ask to be audited) and the entire audit is prolonged over a five year period which was held in the appellees private offices by bias agents who never informed the Appellants of the nature and the cause of their accusation and who never provided the Appellants with assistance of counsel for the Appellants defence. And if the The Civil Rights Act of 1871 - Section 1983 does not protect the Appellants from all these violations, are the Appellants protected anyway by the Laws themselves under these mentioned circumstances.

2. In the Second Part of the Appellants Petition: If the Appellants are protected by any and/or all laws mentioned in question 1 under the circumstances mentioned, does this also null and void the entire five year audit (search and seizure) and/or in conjunction with the following additional violations of the Appellants Constitutional Rights by the IRS: a.) Article 7-Amendment 7 - where the IRS never provided the Appellants with a jury; b.) Article 7-Amendment 8-where the audit is prolonged over a five year period of which the Appellees have to date taken up around seven years of the Appellants time, and where the Appellees demanded the Appellants produce records and books of which they did not have a right to inspect demanding the Appellants do all that work and not compensating the Appellants for the work and demanding that the Appellants come into their offices - as to the 'cruel and unusual punishment' clause; c.) and Article 7 - Amendment 13 - Section 1 - where the Appellees demand the Appellants to do all the work involved in filling out all their forms for business and personal which was not volunteered by the Appellants and where the Appellants object to such involuntary servitude to the IRS of which their slavery has no compensation from the IRS.

3. In the Third Part of the Appellants Petition - (the Counterclaim Petition): Are the Appellants and on Behalf of the United States of America protected from their enemy of the anti-Chirst/anti-Capitalistic/Socialistic-Type Practices of the Internal Revenue Service (such as the graduated Income Tax, also, Social Security, pension type plans, and welfare programs funded by taxation, also, taxation of services without being charged for what is actually

used-such as public schools and other practices of that nature all of which extends from the Federal level to the State levels to the local levels) as stated in the U. S. Constitution in Article 3 - Section 3, Article 4 - Section 4, Article 6 'Supremacy Clause', and Article 7 - Amendments 1, 4, 5, 13 - Section 1; and also, the Declaration of Independence, The Federalist, The Civil Rights Act of 1871 - Section 1983 and The Holy Bible. If the Appellants and on Behalf of the United States are protected against this enemy by any and/or all these Laws, are they then entitled to a repeal of Article 7-Amendment 16 of the U. S. Constitution and to have the Governmental System restructured to comply with the U. S. Constitution as resembling that which the Appellants have shown in their Proposal of a Christian/Capitalistic-Type Practices and Proclaim this Enemy Null and Void.

4. Does the 'Due Process' Clause in Article 7, Amendment 5 and the 'Petition' Clause in Article 7, Amendment 1 in the U. S. Constitution provide for the Appellants the right to receive a decision based upon the merits of the Appellants Brief of the Merits from the U. S. Court of Appeals.

5. If these Clauses mentioned in question 4 do entitle the Appellants to a decision based upon the Merits of the Appellants Brief on the Merits by the U. S. Court of Appeals and the Court refuses to render a decision based upon the Merits of the Brief, does that entitle the Appellants to have their Petition for Writ of Certiorari/Petition for Writ of Certiorari before Judgment Granted by the U. S. Supreme Court enabling the Appellants to receive a decision from the U. S. Supreme Court based upon the Merits of the Appellants Brief on the Merits in its entirety as a matter of judicial discretion and judicial review.

6. If the U. S. Appeals Court did violate the Petitioners Rights as stated in questions 4 and 5 as to the 'Due Process' Clause in Article 7-Amendment 5 and the 'Petition' clause in Article 7-Amendment 1 of the U. S. Constitution, did they then-at that time-also violate Article 6 in the U. S. Constitution as to the 'Supreme Law of the Land' Clause.

7. Do Questions 1, 2, and 3 of the Questions Presented Merit and Justify the U. S. Supreme Court to Grant the Appellants Petition for Writ of Certiorari/Petition for Writ of Certiorari before Judgment as a matter of Judicial Discretion and Judicial Review in its entirety.

TABLE OF CONTENTS

	<u>Pages</u>
Questions Presented	1
Table of Contents	4
Table of Authorities	5
Petition for a Writ of Certiorari/	
Petition for a Writ of Certiorari	
Before Judgement	
Opinions Below	8
Entry of Judgement and Notice of Appeal	9
Statutory Provision to Confer	
Jurisdiction	9
Cases Sustaining Jurisdiction	9
Constitutional Provisions, Acts and Regulations	10
Statement of the Case	14
Argument Amplifying Reasons for the Allowance	
of the Writ's	16
Conclusion	19
Appendices:	20
Appendix A - Statement of Review of Appellants Brief	21
Appendix B - Order Appealed From	22
Appendix C - Opinion of Commissioner	23
Appendix D - Order from the U. S. Court of Appeals	24
Appendix E - Order From the U. S. Tax Court	25
Appendix F - Notice of Appeal	27
Appendix G - Miscellaneous Statement	28

TABLE OF AUTHORITIES²

Cases:	<u>Pages</u>
1. <u>Ashbaugh v. Sims</u> - 483 SW2d 80 (Mo. App. 1972) . . .	1-28
2. <u>Ashwander v. Tennessee Valley Authority</u> - 297 U. S. 288 -1935	1-28
3. <u>Baker v. Carr</u> - 369 U. S. at 211	1-28
4. <u>Beightol v. Kunowski</u> - (1973, CA3 Pa) 486 F2d 293, on Remand (MD Pa) 382 F Supp 985	1-28
5. <u>Byran v. Jones</u> - (1976, CA5 Tex) 530 F2d 1210, cert den 429 US 865, 50L Ed 2d 145, 97 S Ct. 174.	1-28
6. <u>Carter v. Carter Coal Co.</u> - 298 U.S. 238 (1936) ³	1-28
7. <u>Christ v. anti-Christ</u>	
8. <u>Duncan v. Nelson</u> - (1972, CA7 Ill) 466 F2d 939, 945, cert den 409 U.S. 894, 34 L Ed 2d 152, 93 Ct 116, 93 S Ct 175. . .	1-28
9. <u>Escobedo v. Illinois</u> - 378 U.S. 473 (1964)	1-28
10. <u>Ex parte Quirin</u> - 317 U.S. 1(1942) ⁴	1-28
11. <u>Ford v. Wells</u> - (1972, Ed Tenn) 347 F Supp 1026 . . .	1-28
12. <u>Honeyfield</u> at 521	1-28
13. <u>Honeyfield v. Lambeth</u> - 519 SW2d 342 (Mo. App. 1975) .	1-28
14. <u>Jenkins v. Averett</u> - (1970, CA4 NC) 424 F2d 1288, 1232 .	1-28
15. <u>Katz v. United States</u> - 389 U.S. 347 (1967)	1-28
16. <u>Kucinich v. Forbes</u> - (1977, ND Ohio) 432 F Supp 1101 .	1-28
17. <u>Leeson v. Etchinson</u> - 650 SW2d 681 (Mo. App. 1983) .	1-28
18. <u>Mansell v. Saunders</u> - (1967, CA5 Fla) 372 F2d 573 . . .	1-28
19. <u>Maney v. Ratcliff</u> - (1975, Ed Wis) 399 F Supp 760 . . .	1-28
20. <u>Marbury v. Madison</u> - U.S. (1 Craunch) 137 (1803) . . .	1-28
21. <u>Miranda v. State of Arizona</u> - 86 S. Ct. 1602 (1966) . .	1-28

² See all previous original filings

³ See U.S. Supreme Court Rules - Rule 18.

⁴ See U.S. Supreme Court Rules - Rule 18.

22. <u>Monroe v. Pape</u> - (1961) 365 U.S. 167, 5 L Ed 2d 492, 81 S Ct 473	1-28
23. <u>Railroad Retirement Board v. Alton R. Co.</u> - 295 U.S. 330 (1935). ⁵	1-28
24. <u>Rickert Rice Mills v. Fontenot</u> - 297 110 (1936). ⁶	1-28
25. <u>United States v. Banker Trust Co.</u> - 294 U.S. 240 (1935) ⁷	1-28
26. <u>United States v. Mine Workers</u> - 330 U.S. 258 (1947). ⁸	1-28
27. <u>United States v. Nixon</u> - 94 S. Ct. 3090 (1974)	1-28
28. <u>Wilson v. Girard</u> - 354 U.S. 524 (1957). ⁹	1-28
29. <u>Youngstown Sheet & Tube Co. v. Sawyer</u> - 343 U.S. 579 (1952). ¹⁰	1-28

Constitutional Provisions:

1. Article 1 - Section 8	1-28
2. Article 3 - Section 3	1-28
3. Article 4 - Section 4	1-28
4. Article 6	1-28
5. Article 7 - Amendment 1	1-28
6. Article 7 - Amendment 4	1-28
7. Article 7 - Amendment 5	1-28
8. Article 7 - Amendment 6	1-28
9. Article 7 - Amendment 7	1-28
10. Article 7 - Amendment 8	1-28
11. Article 7 - Amentment 13 - Section 1	1-28
12. A Repeal of Article 7 - Amendment 16	1-28

Acts:

1. Civil Rights Act of 1871 - Section 1983	1-28
--	------

⁵See U.S. Supreme Court Rules - Rule 18.

⁶See U.S. Supreme Court Rules - Rule 18.

⁷See U.S. Supreme Court Rules - Rule 18.

⁸See U.S. Supreme Court Rules - Rule 18.

⁹See U.S. Supreme Court Rules - Rule 18.

¹⁰See U.S. Supreme Court Rules - Rule 18.

Statutes/Regulations:¹¹

1. Federal Civil Rights Statute (42 USCS § 1983) 1-28
2. Section 7482 (a) (1) of the Internal Revenue Code of 1986
(26 U.S.C.)¹² 1-28
3. Code Sec. 446 § 4060 - 'Adequacy of Records' 1-28
4. Code Sec. 274 § 3592 - 'Oral Evidence' 1-28
5. Code Sec. 6001 § 6561 - 'Records, Statements, & Special Returns'
6. 'Field Examinations of Returns' - § 15,019 1-28
7. Section 7459(c) of the Internal Revenue Code¹³ 1-28

Miscellaneous:

1. The People's Power - by Charles P. Sohner-El Camino College
- 1973 1-28
2. The Legal Environment of Business - by Robert N. Corley
- University of Georgia, Robert Black - University of Illinois,
O. Lee Reed - University of Georgia, - 1977 1-28
3. Fundamentals of the Legal Environment of Business - By Robert
N. Corley - University of Georgia, O. Lee Reed - University
of Georgia - 1986 1-28
4. College Law for Business - by John D. Ashcroft - Attorney General
- State of Missouri, Janet E. Ashcroft - General Counsel-
Missouri Department of Revenue - 1981 1-28
5. Federal Civil Rights Acts - Civil Practice - by Chester J.
Antieau - 2nd Edition - 1980 1-28
6. The Declaration of Independence
7. The Federalist - by Alexander Hamilton, James Madison, and
John Jay 1-28
8. The Holy Bible.
Christ v. anti-Christ 1-28
9. The St. Louis Post-Dispatch 1-28
10. The St. Louis Globe-Democrat 1-28

¹¹See Federal Tax Guide Reports - Code Sec. 446 § 4060, Code Sec. 274 § 3592, Code Sec. 6001 § 6561, & 'Field Examinations of Return' - § 15,019.

¹²See filing of Commissioner's Response dated 4/6/87.

¹³See filing of Commissioner's Response dated 4/6/87.

*In The
Supreme Court Of The United States*

October Term, 1986

No. 86-

Carlyn M. and Carol J. Johnson
C-Me-J Enterprises

Appellants,

v.

Commissioner of Internal Revenue
Internal Revenue Service

Appellees.

PETITION FOR A WRIT OF CERTIORARI/
PETITION FOR A WRIT OF CERTIORARI
BEFORE JUDGEMENT

OPINIONS BELOW

It is the Opinion of the U.S. Court of Appeals for the Eighth Circuit¹⁴ that the Appellants case be dismissed without prejudice by rendering a decision that they did not base their decision upon the Merits of the Appellants Brief (Proof).¹⁵ It is the Opinion of the U. S. Tax Court¹⁶ that the taxable years of 1979, 1980, 1981, & 1983 be dismissed for lack of jurisdiction - accepting only 1982.¹⁷

¹⁴ & ¹⁶ These captions contains the names of all the parties.

¹⁵ See all original previous filings. The Commissioner disagreed with the U.S. Court of Appeals.

¹⁷ See all original previous filings.

ENTRY OF JUDGMENT AND NOTICE OF APPEAL:

The Order from the U. S. Tax Court was entered on November 24, 1986. The Order from the U. S. Court of Appeals was entered on April 10, 1987. The Appellants filed a Notice of Appeal from the U. S. Tax Court to the U. S. Court of Appeals for the Eighth Circuit two times, one on September 26, 1986 (which the U. S. Tax Court misconstrued as a 'Motion to Vacate') and then again on December 7, 1986.

STATUTORY PROVISION TO CONFER JURISDICTION:

Article 3 of the U.S. Constitution confers original jurisdiction; also Article 1-Section 8, Article 3-Section-3, Article 4 - Section 4, Article 6, Article 7-Amendments 1, 4, 5, 6, 7, 8, 13-Section 1, and a Repeal of Article 7-Amendment 16 of the United States Constitution confers jurisdiction to this court. The Appellants provided proof (their brief) that the U. S. Tax Court lacked jurisdiction in the United States to the U. S. Appeals Court, the U. S. Appeals Court refused to base their decision to dismiss on the Appellants Brief (Proof). As stated in Article 6 of the Constitution in the 'Supremacy Clause' is that, therefore, the U. S. Tax Court is Notwithstanding because its to the Contrary of the U. S. Constitution. Also, Section 7482(a)(1) of the Internal Revenue Code of 1986 (26 U.S.C.) and Section 7459 (c) of the Internal Revenue Code provide for Jurisdiction in this U.S. Supreme Court. Also, the original previous filings as shown in the Appellants original Brief provide for Jurisdiction in this U.S. Supreme Court. Also, Federal Civil Rights Statute (42 USCS § 1983) provides jurisdiction. It would be best to review the entire case to receive a full understanding of the case (as much as possible anyway) especially since the decision of the U.S. Court of Appeals was not to make a decision based upon the proof.

CASES SUSTAINING JURISDICTION:¹⁸

Christ v. anti-Christ, Marbury v. Madison - U. S. (1 Craunch) 137 (1803), United States v. Nixon - 94 S.Ct. 3090 (1974), Escobedo v. Illinois - 378 U.S. 473 (1964), Miranda v. State of Arizona - 86 S.Ct. 1602 (1966), Katz v. United States - 389 U.S. 347 (1967), Baker v. Carr - 369 U.S. at 211, Ashwander v. Tennessee Valley Authority - 297 U.S. 288 - 1935, Ashbaugh

¹⁸See previous original filings & Table of Authorities.

v. Sims - 483 SW2d 80 (Mo. App. 1972), Leeson v. Etchinson - 650 SW2d 681 (Mo. App. 1983), Honeyfield v. Lambeth - 519 SW2d 342 (Mo. App. 1975), Honeyfield at 521, United States v. Banker Trust Co. - 294 U.S. 240 (1935), Railroad Retirement Board v. Alton R. Co. - 295 U.S. 330 (1935), Rickert Rice Mills v. Fontenot - 297 U.S. 110 (1936), Carter v. Carter Coal Co. - 298 U.S. 238 (1936), Ex parte Quirin - 317 U.S. 1 (1942), United States v. Mine Workers - 330 U.S. 258 (1947), Youngstown Sheet & Tube Co. v. Sawyer - 343 U.S. 579 (1952), Wilson v. Girard - 354 U.S. 524 (1957), Beightol v. Kunowski - (1973, CA3 Pa) 486 F2d 293, on Remand (MD Pa) 382 F Supp 985, Bryan v. Jones - (1976, CA5 Tex) 530 F2d 1210, cert den 429 US 865, 50L Ed 2d 145, 97 S Ct. 174, Duncan v. Nelson - (1972, CA7 Ill) 466 F2d 939, 945, cert den 409 US 894, 34 L Ed 2d 152, 93 S Ct 116, 93 S Ct 175, Ford v. Wells - (1972, Ed Tenn) 347 F Supp 1026, Jenkins v Averett - (1970, CA4 NC) 424 F2d 1288, 1232. Kucinich v. Forbes - (1977, ND Ohio) 432 F Supp 1101, Mansell v. Saunders - (1967, CA5 Fla) 372 F2d 573, Maney v. Ratcliff - (1975, ED Wis) 399 F Supp 760, Monroe v. Pape - (1961) 365 US 167, 5 L Ed 2d 492, 81 S Ct 473.

CONSTITUTIONAL PROVISIONS, ACTS & REGULATIONS¹⁹

U. S. Constitution:

Article 7 - Amendment 1 (Petition) Clause; 'Congress shall make no law...abridging the...right of the people...to petition the Government for a redress of grievances.', Article 7-Amendment 5 (Due Process) Clause; 'nor be deprived of life, liberty, or property, without due process of law;', Article 1 - Section 8, in pertinent part-'To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;', Article 3 - Section 3, 'Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court. The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.', Article 4 - Section 4, 'The United States shall guarantee to every State in

¹⁹See original filings

this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.', Article 6, in pertinent part-'This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.', Article 7 - Amendment 1 - 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to assemble, and to petition the Government for a redress of grievance.', Article 7 - Amendment 4 - 'The right of the people to be secure in their persons, houses, paper, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and persons or things to be seized.', Article 7 - Amendment 5, in pertinent part-'nor shall be compelled in any criminal case to be a witness against himself, nor shall be deprived of life, liberty, or property, without due process of law.' and again in Amendment 5-'No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or navel forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;-nor shall private property be taken for public use, without just compensation.', Article 7 - Amendment 6-'In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the Witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.', Article 7 - Amendment 7-'In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of the trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United

States, than according to the rules of common law.', Article 7 - Amendment 8- 'Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.', and Amendment 13-Section 1- 'Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction'. The Appellants seek a repeal to Amendment 16 of the Constitution which states: 'The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.' as unconstitutional.

Acts:

Civil Rights Act of 1871-Section 1983-[This creates tort liability for any public official or employee who injures a person by depriving him or her of constitutionally guaranteed rights. Through interpretation, the Supreme Court has extended this liability to municipal governments that support such behavior by "custom, practice, or policy". An example of constitutionally guaranteed rights - called "civil rights" - is the Fourteenth Amendment right not to be deprived of life, liberty, or property without due process; other examples are the first, fourth, and fifth amendments. Areas of Potential Liability are 1.) Use of zoning for political or discriminatory purposes. 2.) Failure to train and supervise public employees. 3.) Use of permit, inspection, or licensing procedures for political, harassing, or discriminatory purposes.]²⁰ (In pertinent part-paraphrased and summarized)

Regulations:

Federal Civil Rights Statute (42 USCS § 1983). Section 7482(a)(1) of the Internal Revenue Code of 1986 (26 U.S.C.) - [In General - The United States Court of Appeals (other than the United States Court of Appeals for the Federal Circuit) shall have exclusive jurisdiction to review the decisions of the Tax Court, except as provided in section 1254 of Title 28 of the United States Code, in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury; and the judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner

²⁰ See original previous filings (*Appellants Brief).

provided in section 1254 of Title 28 of the United States Code.]²¹

Federal Tax Guide Reports: Code Sec. 446 § 4060 - 'Adequacy of Records. Any original record, such as a cancelled check or a receipt is an adequate record of a particular expenditure. Similarly, other single transactions are normally supported adequately if related original records or documents are retained, whether in a formal or informal matter. With regard to the records that are specifically required to be kept, see § 6561. The nature of records to be kept will, of course, vary with the needs of the particular taxpayer.' (As stated in pertinent part).²² Code Sec. 274 § 3592 - 'Oral Evidence - A taxpayer's statement as to the amount, time and place, business purpose, and business relationship can be substantiated by oral evidence as well as by written evidence. The IRS has issued instructions to its examiners that they can accept oral evidence, so long as the evidence is not improbable or unreasonable, self-contradictory, or inconsistent with surrounding facts and circumstances(.10).'(As stated in pertinent part).²³ Code Sec. 6001 § 6561 -['Records, Statements, and Special Returns - However, the law that compels taxpayers to maintain records and file returns does not entitle the IRS to inspect them without an Administrative Summons(.035).'] and 'The government may only require production of records relating to the liability of the person to whom the notice to produce is directed and not production of all books, papers, records, or other data that may be relevant to an investigation (.10). Production of these materials may be ordered under the Summons provision discussed at § 6969.'](As stated in pertinent part.)²⁴ § 15,019 -'Field Examinations of returns - Therefore, if the taxpayer is engaged in a trade or business and has an established place of business, the revenue agent will conduct the examination at the taxpayer's place of business.' (As stated in pertinent part.)²⁵ Section 7459(c) of the Internal Revenue Code²⁶ - in pertinent part - 'if the Tax Court dismisses a proceeding for lack of jurisdiction, an order to that effect shall be entered in the records of the Tax Court, and the decision of the Tax Court shall be held to be rendered upon the date of such entry.'

²¹ See filing - Commissioners Response to taxpayers - 4/6/87

²² & ²³ See original filing of Appellants Brief.

²⁴ & ²⁵ See original filing of Appellants Brief.

²⁶ See original filing of Commissioners Response - 4/6/87.

STATEMENT OF THE CASE:²⁷

This is an action by Petitioners Carlyn M. And Carol J. Johnson (C-Me-J Enterprises), who seeks Ten Million Dollars in Actual & Punitive Damages & an acceptance of the Petitioners Tax returns as originally filed (including the amended returns) that had been submitted within the tax laws and who also seek to have the entire five year audit nullified and voided. The Appellants further seek to have the Internal Revenue Service Agency declared unconstitutional including the U.S. Tax Court as they are engaged in the same socialistic-type of activities as the Internal Revenue Service. After declaring the Internal Revenue Service and the U. S. Tax Court null and void, we want the Governmental System restructured in compliance with the United States Constitution of America and the Declaration of Independance in such a manner as to resemble the proposal submitted by the Petitioner in a reasonable fashion and an enforcement of a Phase-Out Plan for the Social Security Settlement.²⁸ The Petitioners Petition is composed of Three Parts as stated above - 1.) Accepting the Petitioners tax returns (including the amended returns) as originally submitted; 2.) Declaring the entire audit null and void; 3.) Declaring the Internal Revenue Service and the U. S. Tax Court null and void.

The First Part of the Petitioners Petition²⁹ alleges that the IRS agents violated the Petitioners Rights pursuant the Civil Rights Act of 1871-Section 1983 by violating the following Laws: a.) Code 446 § 4060, Code 274 §3592, Code 6001 § 6561, and 'Field Examinations of Returns'-§ 15,019 of the IRS Rules & Regulations in the Federal Tax Guide Reports; b.) Article 7-Amendment 4 of the U.S. Constitution; c.) Article 7-Amendment 5 of the U.S. Constitution; and d.) Article 7-Amendment 6 of the U.S. Constitution. Also, regardless of the Civil Rights Act of 1871-Section 1983, the Petitioners allege that the IRS (agents) violated these mentioned Laws within the Laws themselves.

The Second Part of the Petitioners Petition alleges that since the IRS (agents) violated all the Laws mentioned in Part One of the Petition, then the entire five year audit is null and void and/or in conjunction with the following Laws violated, the entire five year audit is null and void:³⁰ a.)

²⁷ See all original filings

²⁸ See original filing of Appellants Brief.

²⁹ See Constitutional Provisions, Acts & Regulations.

³⁰ See Constitutional Provisions, Acts & Regulations.

Article 7-Amendment 7 of the U.S. Constitution; b.) Article 7-Amendment 8 of the U.S. Constitution; and c.) Article 7-Amendment 13-Section 1 of the U.S. Constitution.

The Third Part of the Petitioners Petition consists of a Counterclaim Petition that was filed on behalf of the United States of America which alleges that the Internal Revenue Service is engaged in socialistic-type activities thereby resulting in violations of the U.S. Constitution of³¹ - 1.) Article 3 - Section 3; 2.) Article 4 - Section 4; 3.) Article 6 - 'Supremacy Clause'; 4.) Article 7 - Amendment 1, 4, 5, 13 - Section 1; 5.) It declares Article 7-Amendment 16 null and void; and 6.) violations of the U.S. Constitution Biblical of³² a) Matthew, Chapter 22-versus 17-22; b) Matthew, Chapter 17-versus 24-27; c) Matthew, Chapter 15-versus 32-39; d) Mark, Chapter 12-versus 41-44; e) Luke, Chapter 23-versus 1-3; and f) Matthew, Chapter 9-versus 9-13; and violations of 7.) The Declaration of Independence. The Counterclaim then offers a proposal as an alternative to the socialistic-type practices that complies with the U. S. Constitution that consists of capitalistic-type and donations (capitalistic)-type practices for the U. S. Treasurer.³³

The U. S. Tax Court then issued an order dated November 24, 1986 that stated the court dismissed for lack of jurisdiction taxable years of 1979, 1980, 1981, and 1983 stating no statutory notice of deficiency was issued for those years and they would only accept 1982. The Appellants disagreed stating that Form 5213 tied all five years together thereby constituting one entire audit and that the Petitioners did receive a notice of deficiency for 1979, 1980, and 1983 and appealed the case to the U. S. Appeals Court for Eighth Circuit. After the U. S. Appeals Court accepted the Appeal, they issued an order stating that the due date for the Appellants Brief was due March 9, 1987. On January 30, 1987, the Appellants filed for an extension for the due date of the Brief which was granted until April 9, 1987. After the Appellants prepared the Brief and were ready to send it in to the U. S. Appeals Court, the Appellants received a court order dated March 23, 1987 stating that the case was dismissed without prejudice for lack of jurisdiction which was a contradiction of the previous order accepting our appeal. On March 25, 1987, the Appellants filed a 'Motion for Reconsideration to be based upon the contents of the Brief' in response to the order dated March 23, 1987. In the meantime, the Appellee filed a response to the taxpayers'

³¹ See Constitutional Provisions, Acts & Regulations.

³² See original filing of Appellants Brief.

³³ See original previous filings - Appellants Brief.

motion for reconsideration dated April 6, 1987 agreeing with the taxpayers motion for reconsideration of Jurisdiction. Then, the Appellants received a court order dated April 10, 1987 dismissing the Appellants motion for reconsideration stating their decision was not based upon the merits of the brief but merely recognized requirements had not been met and that dismissal was without prejudice. The basis for federal jurisdiction in the court of the first instance was that the Appellants received a statutory notice of deficiency from the Internal Revenue Service of which the Appellants have since abandoned to the U. S. Appeals Court as the U. S. Tax Court does not have any jurisdiction in the United States which left the U. S. Appeals Court with jurisdiction pursuant the U. S. Constitution and other Laws which the Appellants Brief provides proof of,

ARGUMENT AMPLIFYING REASONS FOR THE ALLOWANCE OF THE WRIT'S¹⁴

The Petition for Writ of Certiorari/Petition for Writ of Certiorari before Judgment should be granted for the following reasons: In some respects the Appellants have received final decisions and in other respects the Appellants have not received final decisions. In the first part of the Appellants Petition, Pursuant to Section 7459(c) of the Internal Revenue Code, the U. S. Tax Court gave its final decision regarding the First Part of the Appellants Petition that was to Dismiss taxable years 1979, 1980, 1981, and 1983 for lack of jurisdiction, which pursuant to Section 7482(a)(1) of the Internal Revenue Code of 1986 (26 U.S.C.) gave the U. S. Appeals Court for the Eighth Circuit jurisdiction as the Appellants appealed their case from the U. S. Tax Court. Also, at that time, the Appellants, due to the decision of the U.S. Tax Court, then filed the same case as 'Double Jeopardy' in the U.S. Tax Court-currently docket No. 45188-86 and then again as 'Triple Jeopardy' in the U.S. District Court-Eastern District of Missouri-Eastern Division-currently as case No. 86-2541-C-3. Then the U. S. Appeals Court dismissed the case and refused to base their decision which was not to make a decision based upon the Merits of the Appellants Brief that was submitted to them. The Appellants, therefore, have no other Court to turn to for a decision on the First Part of the Appellants Petition which encompasses the Second and Third Part of the Petition because the U. S. Appeals Court has denied us

¹⁴See all original filings

our right to the 'Due Process' Clause in Article 7-Amendment 5 and the 'Petition' Clause in Article 7-Amendment 1.

The Petition for Writ of Certiorari/Petition for Writ of Certiorari before Judgment should be granted for the following reasons: The Second Part of the Appellants Petition consists of voiding the entire audit due to all the constitutional rights of Appellants that were violated by the Appellees and all other laws involved (Please see the Questions Presented in the first part of this Certiorari; the Constitutional Provisions, Acts, and Regulations; and all previous original filings). As the U. S. Constitution is the Supreme Law of the land, the Appellants Constitutional Rights are important. As the Appellants appealed their case to the U. S. Court of Appeals - the other two parts (Part 2 and 3) of the Appellants Petition went right along with the first Part of the Petition as all three parts are one - which the U. S. Appeals Court made the decision of not to base their decision upon the merits of the Appellants Brief. As shown in Marbury v. Madison- U. S. (1 Craunch) 137 (1803) and United States v. Nixon - 94 S.Ct. 3090 (1974), the U. S. Constitution is the Supreme Law of the Land of which the U. S. Supreme Court may void the rule the U. S. Appeals Court stated as basing their decision to dismiss of which they refused to base their decision upon the Merits of the Appellants Brief.

The Third Part of the Appellants Petition which consists of the Counterclaim Petition is also part of the first and second part of the petition. This Counterclaim Petition (as shown in the Appellants Brief) consists of declaring the IRS and the U. S. Tax Court null and void. The National Security is at stake as indicated in the Counterclaim Petition and the Appellants Brief. Since the Internal Revenue Service is engaged in anti-Christian/anti-capitalistic/socialistic-type practices which is forbidden by the U. S. Constitution and Declaration of Independence and the other Laws stated, the importance of this matter concerns the Public as imperative to have the Writs Granted. The Appellants have offered a Proposal that represents the Majority of the Nation that is based upon Christian/Capitalistic-type practices in which the U. S. Treasurer may conduct its finances which complies with the U. S. Constitution. As stated in the Appellants Brief in Article 4 - Section 4 of the U. S. Constitution in pertinent part, 'The United States shall guarantee to every State in this Union a Republican Form of Government' which not only means a Democracy (of which the Internal Revenue Service is depriving the Judeo-Christian Faith of as the majority of the Nation are of Judeo-Christian Faith) but it also refers to the Republican Party-(meaning Capitalism

as well) which years ago was one party ticket called the 'Democratic-Republican' Party ticket that was led by Thomas Jefferson and James Madison. But through the years, the Internal Revenue Service has turned this one party ticket into a two party ticket that is communistic/socialistic in nature. The Internal Revenue Services does not offer the Majorities Ticket. The Internal Revenue Service are Professional Terrorists. They make a mockery of the U. S. Constitution, Christianity, The Declaration of Independance, and other Laws that are deeply imbedded in our society. The Internal Revenue are Anti-Capitalists of which their socialistic-type practices not only stem from Socialism but Communism as well (As shown in the Exhibits of the Appellants Brief). One only needs to read the Newspaper to get an idea of how violent these terrorists can really become as in other countries around the world. As shown in the Appellants Exhibits in their Brief, these Anti-Capitalists have as part of their doctrine - violent terrorist attacks as their plans. They do not recognize individual rights as in the U. S. Constitution. Every second that goes by, people all over the country are subjected to their violence - some are subjected to a greater degree of their violence than others. If the Appellants Writs are not Granted - this may only prolong and increase their terrorism reign. If these Anti-Capitalist Terrorists are not stopped now, it will, more than likely, get much worse as the Communists/Socialists become stronger. As indicated in such cases as United States v. Banker Trust Co. - 294 U.S. 240. (1935), Railroad Retirement Board v. Alton R. Co., -295 U.S. 330 (1935), Rickert Rice Mills v. Fontenot - 297 U.S. 110 (1936), Carter v. Carter Coal Co. - 298 U.S. 238 (1936), Ex parte Quirin - 317 U.S. 1 (1942), United States v. Mine Workers - 330 U.S. 258 (1947), Youngstown Sheet & Tube Co. v. Sawyer - 343 U.S. 579 (1952), Wilson v. Girard - 354 U.S. 524 (1957) and United States v. Nixon - 94 S.Ct. 3090 (1974), the Appellants (and on behalf of the United States of America) Counterclaim Petition and the Appellants Petition in its entirety of which these Writ's of Certiorari's are written are definately of the Public Importance as to Justify having the U. S. Supreme Court Grant the Appellants Petition for Writ of Certiorari/Petition for Writ of Certiorari before Judgment.

Furthermore, the Appellants are entitled to a speedy and public trial as stated in pertinent part in Article 7-Amendment 6 in the U. S. Constitution - 'the accused shall enjoy the right to a speedy and public trial' of which the Internal Revenue Service has already dragged this whole ordeal out for about seven (7) years.

CONCLUSION

The Appellants Petition for Writ of Certiorari/Petition for Writ of Certiorari before Judgment should be Granted by the United States Supreme Court.

Respectfully Submitted,
Carlyn M. & Carol J. Johnson
11987 Brookmont Drive
Maryland Heights
Missouri, 63043
(314) 739-8326

Pro-Se

APPENDICES

STATEMENT OF REVIEW OF APPELLANTS BRIEF

This statement signifies that it is imperative that the Appellants Brief (Brief on the Merits) filed in the U.S. Court of Appeals for the Eighth Circuit is reviewed along with these Writs - the Petition for Writ of Certiorari/ Petition for Writ of Certiorari before Judgment.

It is also imperative that the Review is from the Original Brief filed in the U. S. Court of Appeals as the Appellants have highlighted the material to be read in Yellow on some of the Exhibits.

UNITED STATES COURT OF APPEALS

For the Eighth Circuit

No. 87-1131

Carlyn M. and Carol J. Johnson

(C-Me-J Enterprises)

Appellants,

v.

Commissioner of Internal Revenue

(Internal Revenue Service)

Appellees.

Date Filed April 10, 1987

ORDER

On March 23, 1987 we dismissed petitioners' appeal for lack of jurisdiction. Before us now is petitioners' request that we reconsider that decision.

The facts leading to this appeal were given in our March 23 order and do not merit repeating. Petitioners argue that our decision was premature because it preceded the filing of briefs. We should reconsider our decision, they argue, in light of their recently filed brief. Upon reconsideration we affirm our earlier dismissal for the same reasons as given in the March 23 order.

We neither agree nor disagree with the arguments on the merits made by petitioners. We merely hold that this is not the time to decide them. Once the Tax Court reaches a final decision on petitioners' 1982 tax liability, petitioners may then appeal that decision, if necessary, as well as the order pertaining to the years 1979, 1980, 1981, and 1983. Until such time, however, the order pertaining to these four years is not final and consequently not appealable. This decision does not go to the merits of petitioners' arguments -- it merely recognizes that threshold jurisdictional requirements have not been met. Further Petitioners' argument and Contention that these requirements are inapplicable because the Tax Court lacked jurisdiction are frivolous and specious and requires no further comment.

The appeal is therefore dismissed without prejudice.

UNITED STATES COURT OF APPEALS

For the Eighth Circuit

No. 87-1131

Carlyn M. and Carol J. Johnson
(C-Me-J Enterprises)

Appellants,

v.

Commissioner of Internal Revenue
(Internal Revenue Service)

Appellees.

Date Filed: April 6, 1987

OPINION IN PERTINENT PART

COMMISSIONER'S RESPONSE TO
TAXPAYERS' MOTION FOR RECONSIDERATION

By order dated March 23, 1987, this Court dismissed the Taxpayers' appeal in the above-entitled case for lack of jurisdiction, reasoning that the decision appealed from was not appealable since it did not dispose of all tax years involved in the suit. Taxpayers have moved the Court to reconsider its dismissal. Because the order of the Tax Court dismissing taxpayers' petition for their 1979, 1980, 1981, & 1983 tax years constitutes the final decision of the court with respect to proceedings for those years, we believe this Court has jurisdiction to review that decision under Section 7482(a)(1) of the Internal Revenue Code of 1986 (26 U.S.C.).

Stamped /s/
Michael L. Paup

Appendix C

UNITED STATES COURT OF APPEALS

For the Eighth Circuit

No. 87-1131

Carlyn M. and Carol J. Johnson
(C-Me-J Enterprises)

Appellants,

v.

Commissioner of Internal Revenue
(Internal Revenue Service)

Appellees.

ORDER

The Court will consider this appeal on the original file of the United States Tax Court. The Clerk of the Tax Court is requested to forward the original file in case no. 14576-86 to this Court forthwith.

Appellants Brief - due March 9, 1987

Appellee Brief - due April 8, 1987

Order entered under Rule 5(a):

[Date Filed - January 27, 1987]

UNITED STATES TAX COURT

No. 14576-86

Carlyn M. and Carol J. Johnson
(C-Me-J Enterprises)

Petitioners,

v.

Commissioner of Internal Revenue
(Internal Revenue Service)

Respondents.

Date Filed: November 24, 1986

ORDER

On September 26, 1986, the petitioner filed a Motion to Vacate the Court's Order dated August 7, 1986.

The record in this case reflects that on July 7, 1986 respondent filed a Motion to Dismiss for Lack of Jurisdiction and to Strike as to the Taxable Years 1979, 1980, 1981, and 1983 upon the ground that no statutory notice of deficiency had been issued for said years. Petitioner on July 29, 1986 filed an objection to respondent's motion, however, petitioner failed to establish that statutory notices of deficiency had been issued for those years. The Court thereupon granted respondent's motion.

Petitioner attached to his motion to vacate a copy of a notice of deficiency dated July 21, 1983, for petitioner's 1981 tax year, and a notice of deficiency for petitioner's 1983 tax year. The date on the notice of deficiency, for the tax year 1983 was illegible, in part, and the Court on October 28, 1986, issued an order to respondent to provide the Court evidence with respect to the date the notice of deficiency was mailed to petitioner.

On November 20, 1986 respondent filed an Objection to petitioner's pending motion to vacate, and attached thereto a copy of the notice of deficiency for the taxable year 1983 which was mailed to petitioner on September 3, 1986.

The petition in this case which was filed on May 19, 1986, was not commenced within the statutory 90-day period from the notice of deficiency issued on July 21, 1983, as to the taxable year 1981. Further, this Court does not have jurisdiction in a deficiency case unless the Commissioner first

issues a notice of deficiency to the taxpayer and the taxpayer then timely files a petition with this Court. Therefore, the petition filed on May 19, 1986 cannot be considered a request to redetermine petitioner's income tax liabilities for the taxable year 1983 since such petition was filed prior to the issuance of the notice of deficiency.

Petitioner has failed to show that notices of deficiency were ever issued to him for the taxable years 1979 and 1980. Accordingly, it is

ORDERED that petitioner's Motion to Vacate the Court's Order dated August 7, 1986, is denied.

Stamped /s/ Chief Judge
✓ Samuel B. Sterrett

UNITED STATES TAX COURT

No. 14576-86

Carlyn M. and Carol J. Johnson
(C-Me-J Enterprises)

Appellants,

v.

Commissioner of Internal Revenue
(Internal Revenue Service)

Respondents.

NOTICE OF APPEAL

Notice is hereby given that Carlyn M. and Carol J. Johnson/C-Me-J Enterprises hereby appeals to the United States Court of Appeals for the Eighth (8th) Circuit from Court Order of Judge Samuel B. Sterrett dated - November 24, 1986.

Also, the Court Order dated October 28, 1986 from Judge Samuel B. Sterrett and all references made regarding the 'Motion to Appeal to the Appeals Court/Objection to U.S. Tax Court's Court Order' filed by petitioner on September 25, 1986 and including all papers filed by petitioner regarding this Motion were supposed to be treated as a Notice of Appeal instead of a Motion to Vacate. Therefore, this correspondence is a Notice that all the Motions to Appeal to the Appeals Court/Objection to the Tax Court's Court Order filed previously should be changed to Notices of Appeal to Court of Appeals and all references made therein pertain directly and are part of this 'Notice of Appeal to Court of Appeals'.

We are, therefore, resubmitting the previous correspondence by filing this Notice of Appeal to Court of Appeals and are sending a check of \$65.00 - Court Cost.

Sincerely,

C-Me-J Enterprises

/s/ Carlyn M. Johnson & Carol J. Johnson

[Dated: December 7, 1986]

MISCELLANEOUS STATEMENT

All other Opinions, Orders, etc. involved in this case are too voluminous that it is necessary to see all the original previous filings if it is necessary for review.

Also, please note that on the order dated April 10, 1987, where it states that where 'the Petitioners' argument and contention that these requirements are inapplicable because the Tax Court lacked jurisdiction are frivolous and specious and requires no further comment' that they did previously admit that they did not base this comment on the Merits (Contents) of the Appellants Brief.

CERTIFICATE OF SERVICE

I, _____, a notary public, do hereby certify that on this _____ day of _____, 1987 personally appeared before me, Carlyn M. (Carl) and Carol J. Johnson, who, being by me first duly sworn declared that they are Pro-Se for the foregoing Petition for Writ of Certiorari/Petition for Writ of Certiorari Before Judgment and that the foregoing Petition for Writ of Certiorari/Petition for Writ of Certiorari Before Judgment will be served upon Roger M. Olsen, Assistant Attorney General and Michael L. Paup, Chief, Appellate Section by certified mail, Receipt No. P-470 140 016 at Department of Justice-Tax Division-Post Office Box 502-Washington, D.C. 20044 and on The Solicitor General by certified mail, Receipt No. P-470 140 017 at Department of Justice, Washington, D.C. 20530; and 40 copies of the foregoing Petition for Writ of Certiorari/Petition for Writ of Certiorari Before Judgment will be served upon the Supreme Court of the United States by express mail, Receipt No. B98424406 at the Office of the Clerk-Supreme Court of the United States-Washington, D.C. 20543.
My commission expires _____

(Notorial Seal)

Notary Signature

Carlyn M. Johnson and Carol J. Johnson
Pro-Se
11987 Brookmont Drive
Maryland Heights, Missouri 63043
(314) 739-8326

AUG 28 1987

JOSEPH F. SPANIOL, JR.
CLERK

(2)
No. 86-2050

In the Supreme Court of the United States

OCTOBER TERM, 1987

**CARLYN M. JOHNSON AND CAROL J. JOHNSON,
PETITIONERS**

v.

COMMISSIONER OF INTERNAL REVENUE

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

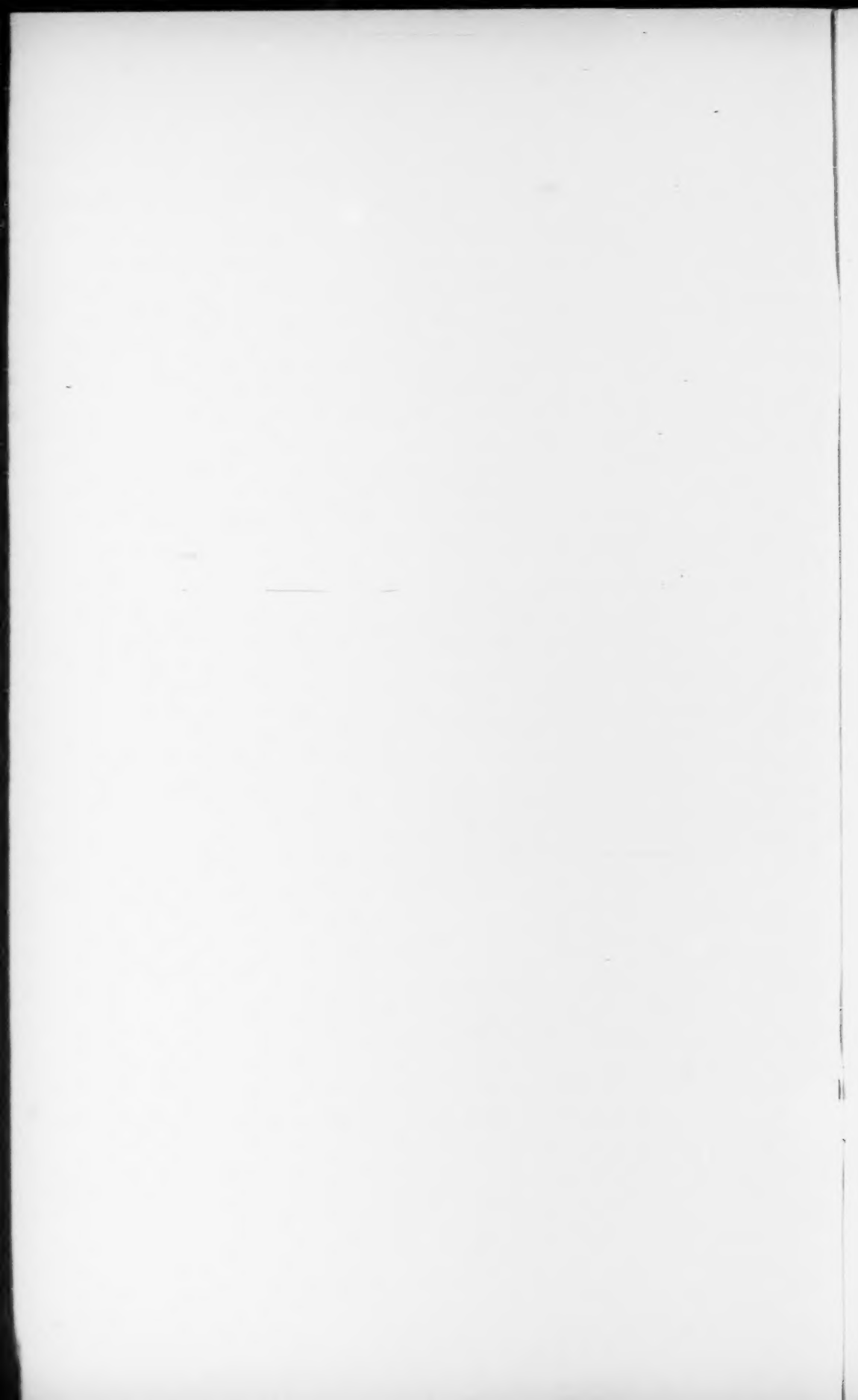
**MEMORANDUM FOR THE RESPONDENT
IN OPPOSITION**

CHARLES FRIED
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

10/28

TABLE OF AUTHORITIES

Cases:	Page
<i>Commissioner v. Duberstein</i> , 363 U.S. 278 (1960) ..	6
<i>Commissioner v. Gooch Milling & Elevator Co.</i> , 320 U.S. 418 (1943)	7
<i>Commissioner v. Smith Paper, Inc.</i> , 222 F.2d 126 (1st Cir. 1955)	6
<i>Commissioner v. Sunnen</i> , 333 U.S. 591 (1948)	5
<i>Dobson v. Commissioner</i> , 320 U.S. 489 (1943)	6
<i>Estate of Yaeger v. Commissioner</i> , 801 F.2d 96 (2d Cir. 1986)	4
<i>Lasky v. Commissioner</i> , 235 F.2d 97 (9th Cir. 1956), aff'd, 352 U.S. 1027 (1957)	5
<i>Wilson v. Commissioner</i> , 564 F.2d 1317 (1977), cert. denied, 439 U.S. 832 (1978)	4
Statutes and rule:	
Act of June 25, 1948, ch. 646, § 36, 62 Stat. 991.....	6
Internal Revenue Code (26 U.S.C.) :	
§ 6212	1
§ 6212(a)	7
§ 6213(a)	2, 7
§ 6214(a)	7
§ 6215	4
§ 7422(a)	7
§ 7459(c)	4
§ 7481(a) (1)	4
§ 7482	6
§ 7482(a)	3
§ 7482(a) (1)	3, 4, 5
§ 7483	4
28 U.S.C. (& Supp. III) 1291	5
28 U.S.C. (& Supp. III) 1292	5
Fed. R. Civ. P. 54(b)	5
Miscellaneous:	
S. Rep. 1559, 80th Cong., 2d Sess. (1948)	6



In the Supreme Court of the United States

OCTOBER TERM, 1987

No. 86-2050

**CARLYN M. JOHNSON AND CAROL J. JOHNSON,
PETITIONERS**

v.

COMMISSIONER OF INTERNAL REVENUE

***ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT***

**MEMORANDUM FOR THE RESPONDENT
IN OPPOSITION**

Petitioners seek review of the court of appeals' decision sua sponte dismissing their appeal without prejudice on grounds of lack of jurisdiction because the Tax Court had not yet entered a final decision disposing of all tax years pending before it.

1. After audit, the Commissioner determined a deficiency in petitioners' 1982 federal income taxes and issued a notice of deficiency to that effect under Section 6212 of the Internal Revenue Code.¹ Peti-

¹ Unless otherwise noted, all statutory references are to the Internal Revenue Code (26 U.S.C.), as amended (the Code or I.R.C.).

tioners thereafter filed a Tax Court petition in which they sought redetermination of their tax liabilities for that year, and, in addition, sought a redetermination of their tax liabilities for 1979, 1980, 1981, and 1983. Because no notices of deficiency for any of the years 1979, 1980, 1981, or 1983 had been issued to petitioners within the 90-day period preceding the filing of their Tax Court petition,² the Tax Court dismissed the petition, for lack of jurisdiction, as to all years other than 1982. The court subsequently denied a motion filed by petitioners, which the court construed as a motion to vacate its order of dismissal. Pet. App. 25-26; see I.R.C. § 6213(a).

Petitioners thereupon took an appeal from the dismissal of their petition for the years 1979, 1980, 1981, and 1983. Their petition seeking redetermination of the deficiency asserted for 1982, however, was still before the Tax Court, where it remains pending. On March 23, 1987, the court of appeals *sua sponte* dismissed the appeal without prejudice, on the ground that the court lacked appellate jurisdiction in the absence of a final decision disposing of all tax years pending before the Tax Court. On April 10, 1987, the court denied petitioners' request for reconsideration (Pet. App. 22).

² The petition was filed on May 19, 1986. A notice of deficiency for petitioners' 1981 tax year had been issued on July 21, 1983, but no Tax Court petition was filed within 90 days of that date. A notice of deficiency for petitioners' 1983 tax year was issued on September 3, 1986, more than three months *after* the instant petition was filed. Section 6213(a), however, requires as a jurisdictional prerequisite that a notice of deficiency *precede* the filing of a Tax Court petition seeking redetermination of a taxpayer's liability for a particular year.

On May 11, 1987, the court issued a per curiam opinion³ to address the Commissioner's contention, advanced in his response to petitioners' request for reconsideration, that the court of appeals did have appellate jurisdiction under Section 7482(a)(1) of the Code.⁴ The court explained that it agreed with the Second Circuit's decision in *Estate of Yaeger v. Commissioner*, 801 F.2d 96 (1986), which held that the statutory language authorizing appellate review of Tax Court decisions "in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury" (I.R.C. § 7482(a)(1)) did not permit a "bifurcated appeal" from the Tax Court. Rather, the court held, petitioners' appeal concerning their 1979, 1980, 1981 and 1983 tax years would have to wait until the Tax Court reached a final decision on petitioners' tax liability for 1982.

³ We are lodging with the Court copies of the March 23 order and the May 11 opinion of the court of appeals, which were not reprinted in the appendix to the petition.

⁴ The Tax Reform Act of 1986 redesignated what was formerly Section 7482(a) of the Code as Section 7482(a)(1) without changing the terms of the statute. That statute provides in full:

Jurisdiction

The United States Courts of Appeals (other than the United States Court of Appeals for the Federal Circuit) shall have exclusive jurisdiction to review the decisions of the Tax Court, except as provided in section 1254 of Title 28 of the United States Code, in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury; and the judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section 1254 of Title 28 of the United States Code.

2. The courts of appeals are divided on the question whether an order dismissing a Tax Court petition as to fewer than all the years before it is immediately appealable. In *Wilson v. Commissioner*, 564 F.2d 1317 (1977), cert. denied, 439 U.S. 832 (1978), the Ninth Circuit exercised jurisdiction over an appeal from the Tax Court's denial of a motion to amend a pending petition to encompass an additional tax year. The Ninth Circuit reasoned that the order had the effect of a final decision dismissing the petition as to the additional year, which the court concluded would be appealable. In *Estate of Yaeger v. Commissioner*, *supra*, on the other hand, the Second Circuit dismissed for lack of jurisdiction an appeal taken from a Tax Court decision that had dismissed a petition as to only one of three tax years at issue.

We believe that the Ninth Circuit's decision in *Wilson* is correct and that the decisions of the Second Circuit in *Yaeger* and of the court below are erroneous. By its terms, Section 7482(a)(1) confers jurisdiction on the courts of appeals to review "decisions" of the Tax Court. Section 7459(c) provides that "[a] decision of the Tax Court * * * shall be held to be rendered upon the date that an order specifying the amount of the deficiency is entered in the records of the Tax Court." It further provides that, where the Tax Court dismisses a proceeding, "an order to that effect shall be entered in the records of the Tax Court, and the decision of the Tax Court shall be held to be rendered upon the date of such entry." If not appealed within the 90-day period specified by Section 7483, such "decisions" become final under Section 7481(a)(1). Any deficiency may then be assessed pursuant to Section 6215, and the decision is no longer subject to review

by any court. See, e.g., *Lasky v. Commissioner*, 235 F.2d 97 (9th Cir. 1956), aff'd, 352 U.S. 1027 (1957).

The import of this statutory framework is that a separate "decision" may be entered as to each particular year in issue. Once a "decision" is entered, we believe that it may be appealed, and, indeed, that it will become final and nonreviewable if not timely appealed.⁵ General principles of finality developed under 28 U.S.C. 1291 and Fed. R. Civ. P. 54(b), such as a preference for avoiding bifurcated appeals, simply have not been incorporated into the statutory provisions dealing with appealability of Tax Court decisions.

The language of Section 7482(a)(1) relied upon the court below—providing that Tax Court decisions are to be reviewed "in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury"—was in no way intended to incorporate into that statute the jurisdictional limitations of 28 U.S.C. (& Supp. III) 1291 and 1292 or the related provisions of Fed. R. Civ. P. 54(b). This language was added to the predecessor

⁵ It is, of course, well settled that a dispute as to tax liability constitutes a "separate cause of action" for each year. *Commissioner v. Sunnen*, 333 U.S. 591, 598 (1948). Thus, even in an income tax refund suit in district court, a judgment covering one or more, but fewer than all, of the years in issue would appear to be appealable under 28 U.S.C. 1291, subject to the district court's certification that "there is no just reason for delay." See Fed. R. Civ. P. 54(b). The only significant difference in the procedures applicable in the Tax Court, we submit, is that appealability of a Tax Court "decision" covering fewer than all years involved would not depend upon a certification that there is no reason for delay.

of Section 7482 in 1948. Act of June 25, 1948, ch. 646, § 36, 62 Stat. 991. Its purpose was to overturn this Court's decision in *Dobson v. Commissioner*, 320 U.S. 489 (1943), which had established a special and highly deferential scope of appellate review of Tax Court decisions. The language in question simply means that the "clearly erroneous" standard of review applies to appeals from the Tax Court, just as it applies to appeals from the district courts. See S. Rep. 1559, 80th Cong., 2d Sess. 2, 13 (1948); *Commissioner v. Duberstein*, 363 U.S. 278, 291 n.13 (1960); *Commissioner v. Smith Paper, Inc.*, 222 F.2d 126, 128 (1st Cir. 1955).

3. We do not believe it necessary for the Court to resolve this circuit conflict in this case. Notwithstanding our view as to the incorrectness of the decision below, petitioners here will sustain no harm as a result of the court of appeals' dismissal, without prejudice, of their appeal. Once the Tax Court enters a decision redetermining petitioners' deficiency in taxes for 1982, they will be free to take an appeal to the Eighth Circuit from the Tax Court's decisions as to 1979, 1980, 1981, and 1983 as well, thereby bringing all their claims before the court of appeals in a single appeal. Indeed, petitioners do not appear to complain in their petition about the jurisdictional ruling of the court of appeals; rather, the petition appears to focus on petitioners' contentions on the underlying merits, which the court of appeals explicitly did not address (slip op. 3), and which would not, in any event, be properly before this Court were it to grant the petition.⁶ If the circuit conflict to

⁶ We note that there appears to be no serious question as to the correctness of the Tax Court's order dismissing the petition as to years other than 1982. It is well settled that

which we have referred should persist, and if the question presented arises in a future case where the rights of one of the parties are actually prejudiced by the decision, the Court can consider at that time whether the question is sufficiently important to warrant certiorari.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

SEPTEMBER 1987

the Tax Court has jurisdiction to redetermine deficiencies only in cases in which the Commissioner has issued a notice of deficiency and the taxpayer thereafter has filed a timely petition with respect to the deficiency so determined. See I.R.C. §§ 6212(a), 6213(a), and 6214(a); *Commissioner v. Gooch Milling & Elevator Co.*, 320 U.S. 418, 420 (1943). Petitioners' contentions concerning their 1979, 1980, 1981, and 1983 tax years can still be raised in a Tax Court proceeding timely initiated after the issuance of a notice of deficiency, if any, or in a timely refund suit instituted in the Claims Court or a federal district court, after payment of the assessed taxes and compliance with the refund claim requirements of Section 7422(a) of the Code.

No. 86-2050

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1986

Carlyn M. and Carol J. Johnson
(C-Me-J Enterprises)

Appellants,

v.

Commissioner of Internal Revenue
(Internal Revenue Service)

Appellees.

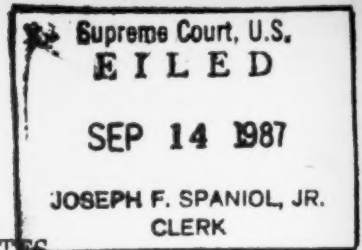
REPLY BRIEF

OBJECTION TO 'MEMORANDUM FOR THE RESPONDENT IN OPPOSITION'

Carlyn M. and Carol J. Johnson
11987 Brookmont Drive
Maryland Heights, Missouri 63043

(314) 739-8326

Pro-Se



1094



The Appellants would like to point out to point out to the U. S. Supreme Court that the appellee has already prolonged this entire case now for approximately 7 years as it is. If the Appellants 'Petition for Writ of Certiorari/ Petition for Writ of Certiorari Before Judgment' is not granted now, it will probably take at least another 5 - 7 years before the rest of the case should come before the U. S. Supreme Court again. Due to the reasons stated by the appellee in their opposition that they contend that there have not been some final decisions made and therefore should not come before the U. S. Supreme Court yet is just exactly why the Appellants filed not only a 'Petition for Writ of Certiorari' but also a 'Petition for Writ of Certiorari Before Judgment' with all the reasons stated therein.

The appellees, obviously, do not want this case heard before the U. S. Supreme Court apparently so that they will not lose and probably in hopes that the Appellants will give up and drop the whole case and pay them what they are

not entitled to. If the 'Petition for Writ of Certiorari/Petition for Writ of Certiorari Before Judgment' is not granted, the appellee will have another, probably, at least 5 - 7 more years to harrass the Appellants. The appellee claims that this will not cause the Appellants any harm which is utterly absurd. It will not only cause a great deal of more harm with regards to the Appellants endurance but will also cost the Appellants a great deal of more money. The appellee/counsel doesn't mind having this case prolonged because it gives them something to do while being paid with the taxpayers money they steal. The Appellants, however, have suffered a great deal already and will suffer a great deal more if this case is prolonged any longer.

The Appellants also wish to point out that the issue of jurisdiction was, indeed, a complaint as shown that it was because the U. S. Court of Appeals for the Eighth Circuit did not base their decision to dismiss on the merits of the brief, of which, had the U. S. Court of

Appeals for the Eighth Circuit based their decision to dismiss on the merits of the case, it would have provided jurisdiction in their court.

Pursuant the Appellants 'Petition for Writ of Certiorari/Petition for Writ of Certiorari Before Judgment' and all the reasons stated therein, the Appellants believe the 'Petition for Writ of Certiorari/Petition for Certiorari Before Judgment' should be Granted by the U. S. Supreme Court.

The Appellants also wish to point out that the letter dated July 30, 1987 by the Solicitor General for a request for an extension states that they received the 'Petition for a Writ of Certiorari/Petition for Writ of Certiorari Before Judgment' on June 30, 1987. The Appellants are submitting verification that the Solicitor General received it on June 23, 1987 - seven day prior to the date stated by the Solicitor General. The appellee was not entitled to an extension, but the Appellants remained quiet. Further, the Appellants have complied with the rules of the U. S. Supreme Court in a timely and proper manner. The appellee, however, not only violates

all the laws stated in the case, but now they are violating the rules of the U. S. Supreme Court by not filing in a timely manner and a proper manner (the opposition was even received on legal size paper, and so forth). It is understandable for a 'Pro-Se' to violate the Rules but for the appellee to violate them is beyond under the circumstances. The message the appellee is sending to the general public is that it is o.k. for the appellee to violate the laws of the land and the rules of the U.S. Supreme Court but everyone else must abide by their corruption. This terrible behavior of the appellee is not only an insult to the Appellants, but the U. S. Supreme Court and all the citizens of the United States as well.

The Appellants have turned to the U. S. Supreme Court for Justice and relief. If the U. S. Supreme condones the disgraceful behavior of the appellee and denies the 'Petition for Writ of Certiorari/Petition for Writ of Certiorari Before Judgment', then the Appellants will probably just drop the whole case and accept that not only is the appellee extremely corrupt, but the Court

System will then be considered just as corrupt.
As stated in the Appellants 'Petition for Writ
of Certiorari/Petition for Writ of Certiorari
Before Judgment', Professional Terrorism is
part of the appellees doctrine for those who
do not accept their anti-Christ/anti-Capital-
istic/Socialistic/Communistic-type Practices
of a Doctrine. If the U. S. Supreme Court
finds favor with the appellee, that will only
prove more of this Professional Terrorism as
not only belonging to the appellee but the
Court System as well.

Respectfully Submitted,

Carlyn M. and Carol J. Johnson

(C-Me-J Enterprises)

11987 Brookmont Drive

Maryland Heights, Missouri 63043

(314) 739-8326

Pro-Se

Writ of Certiorari
P-470 140 017

RECEIPT FOR CERTIFIED MAIL

INSURANCE COVERAGE PROVIDED
ONLY FOR INTERNATIONAL MAIL

(See Reverse)

U.S.G.P.O. 153-116 PS Form 3800, June 1985	Sent to	<i>Elihu G. S. [illegible]</i>
	Street and No.	<i>Dept. of Justice</i>
	City, State and ZIP Code	<i>Washington, D.C. 20530</i>
	Postage	<i>\$1.24</i>
	Certified Fee	<i>75</i>
	Special Delivery Fee	
	Restricted Delivery Fee	
	Return Receipt showing to whom and Date Delivered	
	Return Receipt showing to whom, Date, and Address of Delivery	
	TOTAL Postage and Fees	<i>70</i> <i>269</i>
Postman's Date	<i>70</i> <i>269</i>	

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.	
1. <input type="checkbox"/> Show to whom delivered, date, and addressee's address.	2. <input type="checkbox"/> Restricted Delivery.
3. Article Addressed to: <i>The Elihu G. S. [illegible]</i> <i>Department of Justice</i> <i>Washington, D.C. 20530</i> DEPARTMENT OF JUSTICE	
4. Article Number <i>P-470 140 017</i>	
Type of Service: <input checked="" type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail	
Always obtain signature of addressee or agent and DATE DELIVERED.	
5. Signature — Addressee <i>[illegible]</i>	8. Addressee's Address (ONLY if requested and fee paid)
6. Signature — Agent <i>[illegible]</i>	
7. Date of Delivery <i>JUN 23 1981</i>	

PS Form 3811, Feb. 1980

PATRICIA SCHELLMAN

DOMESTIC RECEIPT

BEST AVAILABLE COPY



CERTIFICATE OF SERVICE-PRO-SE

This is to certify that 2 copies of the foregoing 'Objection to 'Memorandum for the respondent in opposition'' will be served upon Roger M. Olsen, Assistant Attorney General and Michael L. Paup, Chief, Appellate Section by U. S. First Class Mail at Department of Justice-Tax Division-Post Office Box 502-Washington, D. C. 20044 and on the Solicitor General by U. S. First Class Mail at Department of Justice, Washington, D.C. 20530 and the original and 40 copies thereof will be served upon the U. S. Supreme Court by certified mail, receipt no. P-470 140 032 at the Office of the Clerk-Supreme Court of the United States-Washington, D. C. 20543 on or before September , 1987.

Carlyn M. and Carol J. Johnson

Pro-Se

11987 Brookmont Drive

Maryland Heights, Missouri 63043

(314) 739-8326



NOTARY STATEMENT

I, _____, a
Notary Public, do hereby certify that on this
_____ day of _____,
1987, personally appeared before me, Carlyn M.
and Carol J. Johnson, who, being by me first
duly sworn declared that they are Pro-Se for
the foregoing 'Objection to 'Memorandum for the
Respondent in Opposition'' and declared that
they would comply with the foregoing ' Certificate
of Service'.

My Commission Expires: _____

Notary Signature (Notary Seal)